Consumer Federation of America

U.S. Public Interest Research Group

NATIONAL CONSUMER LAW CENTER

NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

August 11, 2005

Mr. John F. Carter, Regional Director
Federal Deposit Insurance Corporation
25 S. Jessie Street at Eker Square, Suite 2300
San Francisco, CA 94105

2005 AUG 15 PM 10:06

Dear Mr. Carter:

The undersigned national consumer and community organizations strongly urge the FDIC to reject the application of Wal-Mart Stores, Inc. to receive FDIC insurance for an industrial bank chartered in Utah. Allowing the largest retail firm in the world to purchase an industrial loan company (ILC) would represent a dangerous and unprecedented blending of banking and commerce. It would allow Wal-Mart to offer many of the same services and loans as commercial banks without the same rigorous regulatory oversight. (Although Wal-Mart has stated that does not intend to offer banking services or make loans, it could change its mind at any time once it is allowed to set up an ILC.) This has enormous negative implications for the safety and soundness of a Wal-Mart-owned bank and for taxpayers who backstop the deposit insurance system.

Wal-Mart's application violates long-standing principles of banking law that commerce and banking should not mix. Recent corporate scandals show the serious risks involved in allowing any commercial entity to own a bank without significant regulatory scrutiny at the holding company level. ILCs are exempt from the Bank Holding Company Act (BHCA) which allows the Federal Reserve to conduct examinations of the safety and soundness not just of banks, but of the parent or holding company of these banks. The BHCA also grants the Federal Reserve the power to place capital requirements and impose sanctions on these holding companies. The FDIC does not have these powers.

Oversight of the holding company is the key to protecting the safety and soundness of the banking system. It is immaterial whether the owner of the bank is a financial or a commercial entity. Holding company regulation is essential to ensuring that financial weaknesses, conflicts of interest, malfeasance or incompetent leadership at the parent company will not endanger the taxpayer-insured deposits at the bank. Years of experience and bank failures have shown this to be true. For example, recent accounting scandals at Sunbeam, Enron, Worldcom, Tyco, Adelphia and many others involved deliberate deception about the financial health of the companies involved. If these companies had owned banks, not only would employees, investors and the economy have suffered, but taxpayers as well.

Moreover, allowing a Wal-Mart-owned industrial bank to enter the FDIC system would further widen the ILC loophole to the BHCA, which should be closed. ILCs were never intended to be large, nationwide banks that offered services indistinguishable from commercial banks. In 1987, Congress granted an exception to the BHCA for ILCs because there were few of them, they were only sporadically chartered in a small number of states, they held very few assets and were limited in the lending and services they offered. In fact, this exception specifically applied only to ILCs chartered in five states (Utah, California, Colorado, Nevada and Minnesota) that have either assets of less than $100 million or do not offer checking services. Since that time, however, everything about ILCs has grown: the number that exist, the amount of assets and federally insured deposits in them and the services and lending products that they can offer.

According to the Federal Reserve, the majority of ILCs had less than $50 million in assets in 1987, with assets at the largest ILC at less than $400 million. As of 2003, one ILC owned by Merrill Lynch had more than $60 billion in assets (and more than $50 billion in federally insured deposits) while eight other large ILCs had at least $1 billion in assets and a collective total of more than $13 billion in insured deposits. Moreover, the five states cited in the law are aggressively chartering new ILCs, allowing them to call themselves "banks" and giving them almost all of the powers of their state chartered commercial banks. These states, especially Utah, are also promoting their oversight as a less rigorous alternative to bank holding company oversight at the Federal Reserve.

It is time to shut down this parallel banking system, not allow its further expansion. We strongly urge the FDIC to deny Wal-Mart's application. We also urge the FDIC to hold a public hearing on this matter prior to making a decision and to have public discussion about Wal-Mart's application at a meeting of the Board of Directors of the FDIC. A decision as important to safety and soundness of the banking system as this should be made as publicly and transparently as possible. For more information about our concerns, please contact Travis Plunkett at the Consumer Federation of America at (202) 387-6121.

Sincerely,

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